

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JACK MILLER, ANNABEL CAMPBELL,	§	
MATTHEW PESINA, LISA PESINA, M.P., a	§	
Minor and J.G., a Minor,	§	
	§	
Plaintiffs,	§	
	§	
V.	§	
	§	
CHIEF JOSEPH SALVAGGIO, In His	§	
Individual and Official Capacities,	§	CIVIL ACTION NO. 20-cv-00642 JKP
OFFICER JIM WELLS, In His Individual and	§	
Official Capacities, OFFICER ANDERSON,	§	
In His Individual and Official Capacities,	§	
OFFICER SAUCEDO, In His Individual and	§	
Official Capacities, OFFICER J. VASQUEZ,	§	
In His Individual and Official Capacities,	§	
STATE POLICE OFFICER JOHN DOE, In His	§	
In His Individual and Official Capacities,	§	
BEXAR COUNTY MAGISTRATE, In Their	§	
Individual and Official Capacities,	§	
KIRBY POLICE DEPARTMENT and	§	
LEON VALLEY POLICE DEPARTMENT,	§	
Jointly and Severally,	§	
	§	
Defendants.	§	
	§	

DEFENDANTS CHIEF SALVAGGIO, OFFICERS WELLS, ANDERSON,
SAUCEDO, VASQUEZ, BROOKS, KING, MUNOZ
AND RIVERA'S ORIGINAL ANSWER

TO THE HONORABLE UNITED STATES DISTRICT JUDGE JASON K. PULLIAM:

NOW COMES CHIEF JOSEPH SALVAGGIO, and OFFICERS WELLS, ANDERSON, SAUCEDO, VASQUEZ, BROOKS, KING, MUNOZ and RIVERA Individually, Defendants in the above entitled and numbered cause and files this their Original Answer to Plaintiffs' Second Amended Complaint heretofore filed and in support thereof would respectfully show unto the Court the following:

**I.
FIRST DEFENSE**

Plaintiffs' Second Amended Complaint fails to state a cause action against these Defendants upon which relief may be granted.

**II.
SECOND DEFENSE**

Defendants **CHIEF JOSEPH SALVAGGIO**, and **OFFICERS WELLS, ANDERSON, SAUCEDO, VASQUEZ, BROOKS, KING, MUNOZ** and **RIVERA** admit this action purports to arise from violations of Plaintiffs' Constitutional rights pursuant to 42 U.S.C. § 1983 as alleged in Plaintiffs' Second Amended Complaint; however, Defendants deny that any cause of action exists thereunder.

**III.
THIRD DEFENSE**

Defendants **CHIEF JOSEPH SALVAGGIO**, and **OFFICERS WELLS, ANDERSON, SAUCEDO, VASQUEZ, BROOKS, KING, MUNOZ** and **RIVERA** deny Paragraphs 23 through 45 of Plaintiff's Second Amended Complaint. Defendants specifically deny Plaintiffs' allegations that he was carrying "fake gun" on his hip. Plaintiff entered the City Hall Building where municipal court was being held and violated state statute by carrying a gun on the premises. Defendants deny Plaintiffs' allegations that he was carrying a fake gun.

Defendants assert unto the Court that at all times made the basis of Plaintiffs' Second Amended Complaint that they were acting pursuant to their capacity as police officers for the City of Leon Valley and Officers for the State of Texas, acting within their discretionary authority and at all times acted in good faith and therefore, they are entitled to "good faith" qualified immunity and official immunity, as a matter of law. Defendant's

assert qualified immunity under both prongs of the qualified immunity analysis. Defendants' actions did not violate Plaintiffs' constitutional rights and Defendant Officers actions were objectively reasonable based on established law, as a matter of law.

IV. FOURTH DEFENSE

Defendants **CHIEF JOSEPH SALVAGGIO**, and **OFFICERS WELLS, ANDERSON, SAUCEDO, VASQUEZ, BROOKS, KING, MUNOZ and RIVERA** deny Paragraphs 46 through 59 of Plaintiffs' Second Amended Complaint. Defendants assert unto the Court that a lawful search warrant was obtained for Plaintiff Miller's residence and was lawfully executed. Defendant Officers are entitled to the protective shroud of qualified immunity and official immunity, as a matter of law.

V. FIFTH DEFENSE

Defendants **CHIEF JOSEPH SALVAGGIO**, and **OFFICERS WELLS, ANDERSON, SAUCEDO, VASQUEZ, BROOKS, KING, MUNOZ and RIVERA** deny "*Count I*" Paragraphs 60 through 66 of Plaintiffs' Second Amended Complaint. Defendants deny Plaintiffs' allegations of the execution of a "no knock" search warrant. The Search Warrant in question was conducted legally and in accordance with proper police procedure. The Search Warrant was executed by a Magistrate Judge and executed by the Defendants herein. Defendants deny Plaintiffs' allegations of retaliatory arrest and assert that Plaintiff Miller was charged with violating Texas Penal Code, Chapter 46, Section 46.03. Defendants assert unto the Court that Plaintiff is a First Amendment Auditor whose cohorts are cabal of communication zealots who propagate electronic civil disobedience.

Plaintiff Miller intentionally came to the City Hall of the City of Leon Valley where municipal court was being held carrying a weapon. Plaintiff claims the weapon was a fake gun and his intention was to evoke a response from the City of Leon Valley Police Department. Defendant Officers acted in good faith at all times made the basis of Plaintiffs' Complaint and are entitled to qualified immunity and official immunity, as a matter of law.

**VI.
SIXTH DEFENSE**

Defendants **CHIEF JOSEPH SALVAGGIO**, and **OFFICERS WELLS, ANDERSON, SAUCEDO, VASQUEZ, BROOKS, KING, MUNOZ and RIVERA** deny "*Count III*" Paragraphs 75 through 80 of Plaintiffs' Second Amended Complaint. Defendants would show unto the Court their entry into Plaintiffs' residence was lawful and pursuant to a valid search warrant. Defendants are entitled to qualified immunity and official immunity, as a matter of law.

**VII.
SEVENTH DEFENSE**

Defendants **CHIEF JOSEPH SALVAGGIO**, and **OFFICERS WELLS, ANDERSON, SAUCEDO, VASQUEZ, BROOKS, KING, MUNOZ and RIVERA** deny "*Count IV*" Paragraphs 81 through 94 of Plaintiffs' Second Amended Complaint. Defendants deny Plaintiffs' claims of excessive force. Defendants deny Plaintiffs' allegation of a "no knock" search warrant and Defendants assert that their actions at all times made the basis of Plaintiffs' Second Amended Complaint were objectively reasonable, as a matter of law.

**VIII.
EIGHTH DEFENSE**

Defendants **CHIEF JOSEPH SALVAGGIO**, and **OFFICERS WELLS, ANDERSON, SAUCEDO, VASQUEZ, BROOKS, KING, MUNOZ and RIVERA** deny “*Count V Malicious Prosecution*” Paragraphs 95 through 109 of Plaintiffs’ Second Amended Complaint. Defendants assert that Plaintiffs have failed to state a cause of action for malicious prosecution under the Fourth Amendment 42 U.S.C. §1983, as a matter of law. *Castellano v. Fragozo*, 352 F.3d 939, 957 (5th Cir. 2003).

**IX.
NINTH DEFENSE**

Defendants **CHIEF JOSEPH SALVAGGIO**, and **OFFICERS WELLS, ANDERSON, SAUCEDO, VASQUEZ, BROOKS, KING, MUNOZ and RIVERA** deny “*Count VI*” Paragraphs 110 through 122 of Plaintiffs’ Second Amended Complaint. Defendants deny Plaintiffs’ allegations of retaliatory prosecution under 42 U.S.C. §1983, as a matter of law.

**X.
TENTH DEFENSE**

Defendants **CHIEF JOSEPH SALVAGGIO**, and **OFFICERS WELLS, ANDERSON, SAUCEDO, VASQUEZ, BROOKS, KING, MUNOZ and RIVERA** deny “*Count VII*” Paragraphs 123 through 126 of Plaintiffs’ Second Amended Complaint. Defendants assert that at all times made the basis of Plaintiffs’ Amended Complaint that they were acting pursuant to their discretionary authority in good faith and are therefore entitled to qualified immunity and official immunity, as a matter of law.

**XI.
ELEVENTH DEFENSE**

Defendants **CHIEF JOSEPH SALVAGGIO**, and **OFFICERS WELLS, ANDERSON, SAUCEDO, VASQUEZ, BROOKS, KING, MUNOZ and RIVERA** deny “*Count VIII*” Paragraphs 127 through 133 of Plaintiffs’ Second Amended Complaint. Defendants assert unto the Court that the Defendants herein are entitled to qualified immunity and official immunity, as a matter of law.

**XII.
TWELFTH DEFENSE**

Defendants **CHIEF JOSEPH SALVAGGIO**, and **OFFICERS WELLS, ANDERSON, SAUCEDO, VASQUEZ, BROOKS, KING, MUNOZ and RIVERA** deny “*Count IX*” Paragraphs 134 through 136 of Plaintiffs’ Second Amended Complaint. Defendants deny Plaintiffs’ allegations of conspiracy under 42 U.S.C. §1983 and assert that Plaintiffs have failed to state a cause of action, as a matter of law.

**XIII.
THIRTEENTH DEFENSE**

Defendants **CHIEF JOSEPH SALVAGGIO**, and **OFFICERS WELLS, ANDERSON, SAUCEDO, VASQUEZ, BROOKS, KING, MUNOZ and RIVERA** deny “*Count X*” Paragraphs 137 through 145 of Plaintiffs’ Second Amended Complaint. Defendants assert unto the Court that they are trained in accordance with the Texas Commission on Law Enforcement (TCOLE) and have met the Texas Commission on Law Enforcement (TCOLE) requirements for certification. Plaintiffs have failed to state a cause of action under 42 U.S.C. §1983 under *Monell*, as a matter of law.

**XIV.
FOURTEENTH DEFENSE**

Defendants **CHIEF JOSEPH SALVAGGIO**, and **OFFICERS WELLS, ANDERSON, SAUCEDO, VASQUEZ, BROOKS, KING, MUNOZ** and **RIVERA** assert that for any allegations that can be inferred under the TEXAS TORT CLAIMS ACT that governmental immunity has not been waived pursuant to the TEXAS TORT CLAIMS ACT, Chapter 101, § 101.021, § 101.0215, § 101.055, § 101.056, § 101.057, §101.101 (e) and (f), as a matter of law.

**XV.
FIFTEENTH DEFENSE**

Defendants **CHIEF JOSEPH SALVAGGIO**, and **OFFICERS WELLS, ANDERSON, SAUCEDO, VASQUEZ, BROOKS, KING, MUNOZ** and **RIVERA** assert that their actions were justified pursuant to the TEXAS PENAL CODE, Chapter 9, § 9.51, as a matter of law. Defendants assert their entitlement to qualified immunity and official immunity, as a matter of law.

**XVI.
SIXTEENTH DEFENSE**

Defendants **CHIEF JOSEPH SALVAGGIO**, and **OFFICERS WELLS, ANDERSON, SAUCEDO, VASQUEZ, BROOKS, KING, MUNOZ** and **RIVERA** assert their defenses under the TEXAS CIVIL PRACTICE & REMEDIES CODE, Chapter 41, § 41.0105 and Chapter 108, § 108.002, as a matter of law.

**XVII.
SEVENTEENTH DEFENSE**

Defendants **CHIEF JOSEPH SALVAGGIO**, and **OFFICERS WELLS, ANDERSON, SAUCEDO, VASQUEZ, BROOKS, KING, MUNOZ** and **RIVERA** deny “*Prayer for Relief*” in Plaintiffs’ Second Amended Complaint. Defendants deny that Plaintiffs are entitled to

compensatory or punitive damages as alleged. Defendants deny that Plaintiffs are entitled to any of the relief requested as alleged. Defendants further deny that Plaintiffs are entitled to attorney's fees pursuant to 42 U.S.C. §1988, as a matter of law.

**XVIII.
EIGHTEENTH DEFENSE**

Defendants **CHIEF JOSEPH SALVAGGIO**, and **OFFICERS WELLS, ANDERSON, SAUCEDO, VASQUEZ, BROOKS, KING, MUNOZ and RIVERA** herein deny any allegations in Plaintiffs' Second Amended Complaint not specifically admitted herein and demands strict proof thereof as required by law.

**XIX.
NINETEENTH DEFENSE**

Defendants **CHIEF JOSEPH SALVAGGIO**, and **OFFICERS WELLS, ANDERSON, SAUCEDO, VASQUEZ, BROOKS, KING, MUNOZ and RIVERA** herein demand a jury trial.

WHEREFORE, PREMISES CONSIDERED, Defendants **CHIEF JOSEPH SALVAGGIO**, and **OFFICERS WELLS, ANDERSON, SAUCEDO, VASQUEZ, BROOKS, KING, MUNOZ and RIVERA** pray that Plaintiffs' suit be dismissed against them, or in the alternative, that the Plaintiffs take nothing by their lawsuit against them, that Defendants have Judgment herein, that Defendants be awarded its costs expended, including reasonable attorney's fees and for such other and further relief, both general and special, and at law and in equity, to which they may show themselves justly entitled.

Respectfully submitted,

LAW OFFICES OF CHARLES S. FRIGERIO PC
Riverview Towers
111 Soledad, Suite 465
San Antonio, Texas 78205
(210) 271-7877
(210) 271-0602 Telefax
Email: csfrigeriolaw@sbcglobal.net

BY: /s/ Charles S. Frigerio
CHARLES S. FRIGERIO
SBN: 07477500
Lead Counsel

HECTOR X. SAENZ
SBN: 17514850
ATTORNEYS FOR DEFENDANTS
**CHIEF JOSEPH SALVAGGIO, OFFICERS WELLS,
ANDERSON, SAUCEDO, VASQUEZ, BROOKS,
KING, MUNOZ and RIVERA**

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of August, 2021, I electronically filed the foregoing Defendants Chief Joseph Salvaggio, and Officers Wells, Anderson, Saucedo, Vasquez, Brooks, King, Munoz and Rivera's Original Answer with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the CM/ECF Participant as follows :

Mr. Brandon J. Grable
Mr. Austin M. Reyna
1603 Babcock Road, Suite 280
San Antonio, Texas 78229
COUNSEL FOR PLAINTIFFS

Email: brandon@ggm.law
Email: austin@ggm.law

Mr. Adolfo Ruiz
Mr. Patrick Bernal
Denton Navarro Rocha Bernal & Zech
2517 N. Main
San Antonio, TX 78212
ATTORNEYS FOR DEFENDANTS
CITY OF KIRBY AND
CITY OF LEON VALLEY

Email: aruiz@rampagelaw.com
Email: pbernal@rampagelaw.com

/s/ Charles S. Frigerio
CHARLES S. FRIGERIO